

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX REFERENCE NO. 356 OF 1988.

The Commissioner of Income-tax,
Bombay City-VI, Bombay.

... Applicant.

V/s.

Mrs. Sunitaraje A.Apte Trust.

... Respondent.

Shri D.S.Chopra for the applicant.

Shri Prasad Vaidya i/b S.N. Inamdar for the
respondent

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 11th July 2005.

P.C. :

. By this reference under section 256 of the
Income-tax Act, 1961, the Income Tax Appellate
Tribunal has referred the following question of law
for the opinion of this Court:

1. Whether, on the facts and in the
circumstances of the case and having
regard to the terms of the Trust Deed
dated 9.5.1973, the Tribunal was right
in law in holding that the assessee
Trust is not a discretionary trust and
consequently the provisions of section
164 (1) of the I.T. Act, 1961 are not
applicable?"

. Learned counsel for the parties agreed that the question referred to above is squarely covered by the judgment of this Court in the case of **C.I.T. vs.Trustees of the Trust for Relatives of Mrs.Suneeti Raje A.Apte Trust (1999) 240 ITR 12(Bombay).**

. In this view of the matter, for the reasons recorded in the in the aforesaid judgment, the above question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

. Reference accordingly stands disposed of with no order as to costs.

(A.S.AGUIAR, J.)

(V.C.DAGA, J.)